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DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-802]

Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Notice of Reopening of the First Five-year “Sunset” Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 7, 2010, the Department of Commerce (“the Department”) published the final results of the first sunset review of the antidumping duty (“AD”) order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (“Vietnam”). Certain information has come to the Department’s attention that may call into question the integrity of the first sunset review and the information on which the Department relied for its final results. The Department is reopening the first sunset review to consider the new information and invites the interested parties to comment on this information.

DATES: EFFECTIVE DATE: (INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.)

FOR FURTHER INFORMATION CONTACT: Jerry Huang, AD/CVD Operations, Office V, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: 202-482-4047.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2010, the Department published the final results of the first sunset review of the AD order on certain frozen warmwater shrimp from Vietnam finding that

revocation of the order would likely lead to continuation or recurrence of dumping.¹ On April 5, 2011, the International Trade Commission (“the ITC”) published its determination pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”) that revocation of the AD orders from Brazil, India, the People’s Republic of China (“PRC”), Thailand and Vietnam would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.² On April 29, 2011, the Department published the notice of continuation of these AD orders.³

Subsequent to the publication of the Final Results, in a separate proceeding concerning the AD order on certain frozen warmwater shrimp from the PRC, Petitioners submitted to the Department certain information released in conjunction with a federal criminal proceeding before the United States District Court for the Central District of California.⁴ This information may be relevant to the AD order on shrimp from Vietnam. In particular, the information, which relates to the time period considered in the sunset review, indicates that Vietnamese exporters of shrimp may have engaged in a scheme to falsely label seafood and evade payment of ADs.⁵ The

¹ See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Five-year “Sunset” Review of the Antidumping Duty Order, 75 FR 75965 (December 7, 2010)(“Sunset Final Results”).

² See Frozen Warmwater Shrimp from Brazil, India, the People’s Republic of China, Thailand and Vietnam, 76 FR 18782 (April 5, 2011).

³ See Certain Frozen Warmwater Shrimp from Brazil, India, the People’s Republic of China, Thailand and Vietnam: Continuation of Antidumping Duty Orders, 76 FR 23972 (April 29, 2011).

⁴ See Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 77 FR 53856, 53857 (September 4, 2012) and the accompanying Issues and Decisions Memorandum at Company Specific Issues (Hilltop) and Comments 1-2; see also Certain Frozen Warmwater Shrimp from the People’s Republic of China: Notice of Final Reconsideration of a Changed Circumstances Review, 78 FR 76106 (December 16, 2013) and the accompanying Issues and Decisions Memorandum at Comment 1. Petitioners also referenced this information in a submission made in an administrative review of this Vietnam shrimp proceeding, but did not place it on the administrative record of that segment. See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam; Final Results of Re-conducted Administrative Review of Grobest & I-Mei Industrial (Vietnam) Co., Ltd. and Intent Not to Revoke; 2008 – 2009, signed March 13, 2014, publication pending.

⁵ See United States’ Position with Respect to Sentencing, at 2, 5 (February 6, 2012) (“Sentencing Report”).

Sentencing Report states, among other things, that the “scheme was undertaken to . . . escape anti-dumping duties and/or scrutiny of possible circumvention of anti-dumping duties. . . .”⁶

According to the Sentencing Report, a U.S. importer, Ocean Duke,⁷ imported shrimp from countries subject to an AD order, “particularly from Vietnam” and “labeled it, falsely, as product of Cambodia (thus, not subject to anti-dumping duties).”⁸ Moreover, the Sentencing Report indicates that subsequent to the imposition of ADs on shrimp from Vietnam in 2004,⁹ “between May 2004 and July 2005 Ocean Duke imported as product of Cambodia over 15 million pounds of aquacultured, or farmed shrimp, with a declared value of over \$42 million.”¹⁰ The Sentencing Report also states that “during all of 2004 and 2005, Cambodia produced only an estimated 385,000 pounds of aquacultured shrimp.”¹¹ According to the Sentencing Report, internal emails and statements of former employees confirm the existence of significant shipments of “Vietnamese shrimp through Cambodia, thus making possible the export of 15 million pounds,” i.e., many times greater than Cambodia’s entire aquacultured shrimp production.¹²

⁶ According to the Sentencing Report, the scheme involving Vietnamese shrimp was originally uncovered when the NOAA Office of Enforcement and Immigration and Customs Enforcement (“ICE”) investigated several companies importing Vietnamese catfish, which was subject to a separate antidumping duty order, in boxes labeled as other species that were not subject to antidumping duties, such as “sole,” “grouper,” “carp,” “channa,” etc. See Sentencing Report at 19.

⁷ Ocean Duke was found to be an affiliate of a Vietnamese exporter during the time period. See e.g., Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review, 72 FR 10689, 10691-93 (March 9, 2007) (unchanged in final results, Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and New Shipper Review, 72 FR 52052 (September 12, 2007)).

⁸ See Sentencing Report at 5.

⁹ The Department instructed U.S. Customs and Border Protection to begin collecting duties as of July 16, 2004, the date of publication of its affirmative preliminary determination of sales at less than fair value. See Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination; Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam, 69 FR 42672, 42686 (July 16, 2004).

¹⁰ See Sentencing Report at 5.

¹¹ Id. at 5 and at Attachments 1-3 (documenting Cambodian shrimp production data).

¹² Id. at 5.

The Sentencing Report indicates that “U.S. Customs records establish that in 2002 and 2003, Ocean Duke imported shrimp from Vietnam, Thailand, China, and occasionally Indonesia; but not Cambodia.”¹³ On January 27, 2004, the Department published in the Federal Register the notice of initiation of AD investigations on certain warmwater shrimp from various countries, including Vietnam.¹⁴ These investigations did not involve Cambodian shrimp.¹⁵

Relying on U.S. Customs records, the Sentencing Report states that in May 2004, i.e., within months from the initiation of the AD investigation on shrimp from Vietnam, Ocean Duke ceased importing shrimp from Vietnam and simultaneously began importing significant quantities of shrimp from Cambodia.¹⁶ During the period from May through December 2003, i.e., immediately prior to the initiation of the AD investigation on shrimp from Vietnam, Ocean Duke imported 52 shipments of shrimp from Vietnam and none from Cambodia.¹⁷ In contrast, during the same period in 2004, i.e., after the AD investigation was initiated, Ocean Duke imported no shrimp from Vietnam and 327 shipments of shrimp from Cambodia.¹⁸ The email correspondence to the U.S. importer, dated May 13, 2004, states in part: “We are shipping some containers of [shrimp] . . . from VN to Cambodia for repacking. We really want to reuse all white cartons of Vietnam and stick MC [master carton] labels in Cambodia.”¹⁹

¹³ Id. at 20 (emphasis in the original) and Attachments 7 and 8.

¹⁴ See Initiation of Antidumping Duty Investigations, 69 FR 3876 (January 27, 2004) (“Notice of Initiation”).

¹⁵ Id.

¹⁶ See Sentencing Report at 20 and Attachment 10.

¹⁷ Id. at 20-21 and Attachments 9 and 10.

¹⁸ Id.

¹⁹ Id. at Attachment 14.

Scope of the Order²⁰

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,²¹ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States (“HTSUS”), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

²⁰ On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp. See Certain Frozen Warmwater Shrimp From Brazil, India, the People’s Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision, 76 FR 23227 (April 26, 2011). Because dusted shrimp were excluded from the scope of the order during the sunset review period, dusted shrimp continue to be excluded for purposes of this re-opened sunset review.

²¹ “Tails” in this context means the tail fan, which includes the telson and the uropods.

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs

purposes only and are not dispositive, but rather the written description of the scope of the order is dispositive.

Analysis

The Department determines that the information contained in the Sentencing Report warrants a reopening of the first sunset review of the AD order on certain frozen warmwater shrimp from Vietnam. In accordance with requirements of the Act, in the sunset review, the Department examined whether revocation of the AD order would be likely to lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before and the period after the issuance of the AD order. The information contained in the Sentencing Report was not available to the Department at the time of the sunset review, and thus was not considered by the Department in its likelihood determination.

The information in the Sentencing Report suggesting the existence of a multi-year transnational scheme to avoid payment of ADs on Vietnamese shrimp is potentially relevant to the issues considered in the sunset review, including whether dumping is likely to continue or recur if the AD order is revoked. We are concerned that the record examined in the sunset review may have been tainted by fraud, which may have affected the completeness, accuracy and reliability of the information considered by the Department. For example, a significant portion of Vietnamese shrimp exporters to the United States (collectively referred to as Vietnamese

Shrimp Exporters)²² actively participated in the sunset review, making joint submissions, in which they argued in part that certain import volume declines occurred because of supply and demand issues.²³ In making its joint submissions to the Department (and certifying to their accuracy), however, the Vietnamese Shrimp Exporters (which included the affiliate of Ocean Duke) did not present information to the Department related to the findings in the Sentencing Report regarding the alleged scheme for avoiding the payment of ADs by means of exporting Vietnamese shrimp as the product of Cambodia.

The Court of Appeals for the Federal Circuit recognized the Department's authority to ensure that our proceedings are not undermined by fraud, holding that the Department has the "inherent authority" to reopen and reconsider a previously conducted proceeding, when new evidence of fraud calls into question the integrity of the determination.²⁴ Here, the information stemming from a separate criminal proceeding raised serious questions regarding the integrity, accuracy and completeness of the administrative record considered in the sunset review of the AD order on shrimp from Vietnam. Accordingly, we determine that the reopening of the first sunset review to consider this information and its impact on the sunset review is warranted under these circumstances.

Comments

²² The Department received substantive responses to its notice of initiation of the sunset review from Vietnamese Shrimp Exporters and domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). 19 CFR 351.218(e)(1)(ii)(A) provides that the Secretary normally will conclude that respondent interested parties have provided an adequate response to a notice of initiation where the Department receives complete substantive responses from respondent interested parties accounting on average for more than 50 percent, by volume, or value, if appropriate, of the total exports of the subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation of the sunset review. On March 2, 2010, the Department determined that the Vietnamese Shrimp Exporters submitted an adequate substantive response to the Department's notice of initiation. See Memorandum to James C. Doyle: Adequacy Determination in Antidumping Duty Sunset Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated March 2, 2010.

²³ See Sunset Final Results, and accompanying Issues and Decision Memorandum at Issue 1.

²⁴ See Tokyo Kikai Seisakusho, Ltd. v. United States, 529 F.3d 1352, 1360-62 (Fed. Cir. 2008).

Concurrently with the publication of this notice, the Department intends to place the new information discussed above on the record of this sunset review. The Department invites all interested parties to comment on the new information. Interested parties may submit comments no later than 30 days from the publication of this notice. Comments must be limited to the new information and how the Department should consider it in its analysis.

Filing Information

All submissions in this reopened segment must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's AD and Countervailing Duty ("CVD") Centralized Electronic Service System ("IA ACCESS"), can be found at 19 CFR 351.303.²⁵

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.²⁶

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a public service list for this sunset review. Because changes to the representation of interested parties may have changed since this sunset review was initially conducted, to facilitate the timely update of the service list, it is requested that those seeking recognition as interested parties to this reopened segment file an entry of appearance within 10 days of the publication of this notice.

We urge interested parties to apply for access to proprietary information under APO immediately following publication of this notice in the Federal Register. The Department's

²⁵ See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures, 76 FR 39263 (July 6, 2011).

²⁶ See section 782(b) of the Act.

regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304-306.

This five-year (“sunset”) review and notice are in accordance with sections 751(c), 752(c), and 777(i) of the Act.

Dated: March 14, 2014.

Paul Piquado,
Assistant Secretary
for Enforcement and Compliance.

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